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FRANCIS ANDERSON *v.* COMMISSIONER  
OF CORRECTION  
(SC 18808)

Rogers, C. J., and Norcott, Palmer, Zarella and Eveleigh, Js.

*Argued January 4—officially released May 7, 2013*

*Robert J. McKay*, special public defender, for the appellant (petitioner).

*Tamara A. Grosso*, deputy assistant state's attorney, with whom, on the brief, was *Gail P. Hardy*, state's attorney, for the appellee (respondent).

*Opinion*

PER CURIAM. In this certified appeal, the petitioner, Francis Anderson, appeals from the judgment of the Appellate Court, which reversed the judgment of the habeas court granting in part the petitioner's revised, amended petition for a writ of habeas corpus on the ground that the petitioner was deprived of the effective assistance of trial counsel due to a conflict of interest. We granted the petitioner's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly determine that the [petitioner] was not deprived of his constitutional right to effective assistance of counsel when both the [petitioner] and a codefendant were represented by a different attorney from the same public defender's office?" *Anderson v. Commissioner of Correction*, 301 Conn. 921, 22 A.3d 1280 (2011). We answer this question in the affirmative and, accordingly, affirm the judgment of the Appellate Court.

The following relevant facts and procedural history are set forth in the opinion of the Appellate Court: "In the underlying criminal matters, the petitioner was charged with [multiple offenses, including burglary, larceny, credit card theft, assault and violation of probation]. On January 10, 2008, the petitioner entered guilty pleas, pursuant to the *Alford* doctrine,<sup>1</sup> to three counts of burglary . . . and one count of larceny . . . and admitted a violation of probation. The state entered a nolle prosequi as to the remaining charges. On March 6, 2008, the trial court sentenced the petitioner to a total effective sentence of five years imprisonment and three years of special parole. The petitioner did not file a direct appeal.

"On October 8, 2009, the petitioner filed a revised amended petition for a writ of habeas corpus alleging [inter alia] . . . that trial counsel, attorney Linda Babcock of the office of the public defender for the judicial district of Hartford . . . rendered ineffective assistance, depriving the petitioner of his right to the effective assistance of counsel under both the state and federal constitutions.

"[At] the November 9, 2009 habeas hearing, Babcock testified that the petitioner had been implicated in some of the charges by a codefendant, Jason Fennely, who was represented by another public defender from the Hartford [judicial district], attorney Robert Famiglietti. She also testified that, while the criminal case was pending, she had requested Famiglietti's permission to speak with Fennely to learn whether he planned to testify against the petitioner but that Famiglietti had denied the request. Additionally, Babcock testified that Famiglietti would not reveal Fennely's intentions. Finally, in this regard, Babcock testified that she and Famiglietti shared no information pertaining to the case, and the fact that they worked in the same office had no effect

on her representation of the petitioner.

“By oral decision at the close of the hearing, the habeas court found that . . . Babcock did not act in a constitutionally defective manner in her representation of the petitioner. Nevertheless, the court granted the petition [in part] on the basis of its finding that [Babcock] had an actual conflict of interest. The court reasoned that Famiglietti and Babcock, as public defenders from the same office, were members of the same law firm and were prohibited ethically from representing adverse interests. Because they represented codefendants with adverse interests, the [habeas] court found that their simultaneous representation of the petitioner and Fennely was a conflict of interest prohibited by rule 1.7 of the Rules of Professional Conduct. On this basis, and without finding that Babcock’s claimed conflict adversely affected her representation of the petitioner, the court granted the petition [in part].<sup>2</sup> . . . [T]he court denied the . . . motion for reconsideration [filed by the respondent, the commissioner of correction] but, subsequently . . . granted the respondent’s petition for certification to appeal.

“On appeal [to the Appellate Court], the respondent claim[ed] that the habeas court improperly determined that Babcock was burdened by an actual conflict of interest that deprived the petitioner of his constitutional right to the effective assistance of counsel. In this regard, the respondent . . . [claimed that the habeas] court improperly determined that (1) the representation was prohibited by the Rules of Professional Conduct, (2) a breach of the rules was sufficient to establish a constitutional violation, and (3) the record supported a conclusion that Babcock was burdened by an actual conflict of interest.” *Anderson v. Commissioner of Correction*, 127 Conn. App. 538, 539–42, 15 A.3d 658 (2011). The Appellate Court agreed with the respondent that the habeas court had misapplied the Rules of Professional Conduct in determining that Babcock was burdened by an actual conflict of interest. *Id.*, 548–49. The Appellate Court explained that, although rule 1.7 (a) of the Rules of Professional Conduct<sup>3</sup> prohibits representation that involves a concurrent conflict of interest and that rule 1.10 (a) of the Rules of Professional Conduct<sup>4</sup> provides that one lawyer’s conflicts generally are imputed to the members of his or her firm, Babcock was not subject to imputation under rule 1.10 (a) because she was a government employee, and, therefore, her representation of the petitioner was governed by rule 1.11 of the Rules of Professional Conduct.<sup>5</sup> See *id.*, 544–45. The Appellate Court also noted that changes made to rules 1.10 and 1.11 in 2007 contemplated an express distinction between private and government attorneys and clarified that conflicts are not imputed to current government employees. See *id.*, 545–46. The Appellate Court further observed that this exemption from the imputation of a conflict is explicitly acknowledged in

the commentary to rule 1.11, which provides in relevant part that, “[b]ecause of the special problems raised by imputation within a government agency, subsection (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers. . . .” Rules of Professional Conduct 1.11, commentary; see *Anderson v. Commissioner of Correction*, supra, 545. In light of the plain language of rules 1.10 and 1.11, the Appellate Court concluded that it was improper for the habeas court to have imputed Famiglietti’s representation of Fennely to Babcock. *Anderson v. Commissioner of Correction*, supra, 545.

The Appellate Court also agreed with the respondent that the habeas court improperly had determined that a breach of the Rules of Professional Conduct alone was sufficient to establish a violation of the right to effective assistance of counsel. *Id.*, 551. The Appellate Court explained that, under our case law, “‘in order to establish a violation of the sixth amendment the [petitioner] has a two-pronged task. He must establish (1) that counsel actively represented conflicting interests, and (2) that an actual conflict of interest adversely affected his lawyer’s performance.’ . . . *Phillips v. Warden*, [220 Conn. 112, 133, 595 A.2d 1356 (1991)], quoting *Cuyler v. Sullivan*, [446 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)].” *Anderson v. Commissioner of Correction*, supra, 127 Conn. App. 549. The Appellate Court concluded, therefore, that, even if the habeas court had applied the Rules of Professional Conduct correctly, an ethical violation, without more, is insufficient to establish a constitutional violation. *Id.*, 551. The Appellate Court noted that the habeas court had found no specific instances in which the petitioner’s interests had been adversely affected by Babcock’s representation. *Id.* Indeed, the Appellate Court observed that the habeas court expressly found that Babcock’s representation was not constitutionally deficient. *Id.*, 551–52. The Appellate Court concluded, therefore, that, because the habeas court’s finding of an actual conflict was based on a misapplication of the Rules of Professional Conduct and a misplaced reliance on an incorrect legal principle, namely, that an ethical violation in and of itself constitutes a constitutional violation, the petitioner had failed to demonstrate that an actual conflict of interest existed and deprived him of the effective assistance of counsel. *Id.*, 552. The Appellate Court therefore reversed the judgment of the habeas court and remanded the case with direction to render judgment denying the habeas petition. *Id.*

Thereafter, we granted certification to appeal, limited to the issue of whether the Appellate Court properly determined that the petitioner was not deprived of his constitutional right to the effective assistance of counsel. “Our examination of the record and briefs and our

consideration of the arguments of the parties [persuade] us that the judgment of the Appellate Court should be affirmed on the certified issue. The Appellate Court properly resolved that issue in its [thorough] and well reasoned opinion. Because that opinion fully addresses all arguments raised in this appeal, we adopt it as a proper statement of the issue and the applicable law concerning that issue. It would serve no useful purpose for us to repeat the discussion contained therein.” *Ruotolo v. Tietjen*, 281 Conn. 483, 486, 916 A.2d 1 (2007).

The judgment of the Appellate Court is affirmed.

<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

<sup>2</sup> The habeas court found against the petitioner on his other claims, which are not at issue in this appeal.

<sup>3</sup> Rule 1.7 (a) of the Rules of Professional Conduct provides in relevant part: “[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

“(1) the representation of one client will be directly adverse to another client; or

“(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

<sup>4</sup> Rule 1.10 (a) of the Rules of Professional Conduct provides in relevant part: “While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9 . . . .”

<sup>5</sup> Rule 1.10 (d) of the Rules of Professional Conduct provides in relevant part: “The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.”

Rule 1.11 is entitled “Special Conflicts of Interest for Former and Current Government Officers and Employees,” and provides in relevant part: “(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

“(1) Is subject to Rules 1.7 and 1.9 . . . .”

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